IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.Civil Writ Petition No. 86/06

(Prakash Mal vs. Rent Tribunal,Jodhpur & Anr.)

Date of Order:- 19.11.2007.

HON'BLE MR.JUSTICE SANGEET LODHA

Mr.S.P.Sharma, for the petitioner.
Mr.M.L.Chhangani, for the respondent.

BY THE COURT:-

This writ petition is directed against orders dated 1.11.04 and 27.9.05 passed by the Judge, Rent Tribunal,Jodhpur in rent application No.188/05, whereby the applications preferred by the petitioner, a tenant in the suit premises, for cross examination of the witnesses produced on behalf of the respondent no. 2-landlord, has been rejected.

The brief facts of the case are that the respondent no.2 -landlord has preferred an application u/s 9 of the Rent Control Act, 2001(in short "the Act of 2001" hereinafter) for eviction of the petitioner from the suit premises a shop on the ground of reasonable and bona fide necessity.An application was preferred by the petitioner u/s 21 of the Act of 2001 for calling the deponents whose affidavits were filed on behalf of the respondent-landlord for cross examination. It was alleged in the application that the affidavits produced are stereo typed, therefore, so as to bring the truth on record, it is necessary to

cross examine the witnesses. The learned Tribunal being of the opinion that the Act of 2001 provides for the evidence to be taken by way of affidavits,therefore, simply on the ground that the affidavits filed are stereo typed , the permission for cross examinations cannot be granted. Accordingly, the application preferred by the petitioner was rejected vide order dated 1.11.04(Annex.1).

In view of the decision of this Court in the matter of Aasandas Vs. State of Rajasthan(2005(2) C.D.R. , 1277(Raj.)), the petitioner preferred yet another application u/s 21 for permitting him to cross examine the witnesses. The learned Tribunal arrived at the finding that there is no change in the circumstances after passing of the earlier order dated 1.11.04 rejecting the application preferred by the petitioner ,therefore , the application preferred by the petitioner praying for permission to cross examine the witnesses has no merits. Accordingly, the application preferred by the petitioner has been rejected vide order dated 27.9.05(Annexure 3).

It is to be noticed that after the rejection of the application preferred by the petitioner, vide order dated 1.11.04, the Division Bench of this Court in the matter of Aasandas (supra), while interpreting the provisions of Section 21 of the Act of 1951 has categorically held that discretion vested u/s 21 with the Presiding Officer of the Rent Tribunal is not a discretion merely

to deny the just prayer for permitting a party to cross examine the witnesses. The Hon'ble Court observed that the Rent Tribunal cannot take it that; ordinarily the prayer for cross examination has to be refused and only in rare cases, cross examination is to be permitted. The Hon'ble Court observed that the principle is other way round. The Bench further observed that where a decision depends on oral testimony and affidavits forms oath against oath , and facts deposed in affidavits are not verifiable from other material on record , ordinarily, in such case, cross examinations ought to be permitted in the interest of giving fair trial to litigants.

It is to be noticed that the suit preferred by the respondent-landlord is for eviction of the petitioner -tenant from the suit premises on the ground of reasonable and bona fide necessity. Obviously, the finding on the questions involved in the application shall depend on the statement on oath of either parties. Therefore, it will be unjust to deny the petitioner to cross examine the deponents whose affidavits have been produced by the respondent no.2 in support of his case. In this view of the matter, the orders impugned passed by the Rent Tribunal are not sustainble in eye of law.

Accordingly, the writ petition is allowed. The orders impugned dated 1.11.2004 and 27.9.05 are set aside. The application preferred by the petitioner for permitting him to

cross examine the deponents whose affidavits have been produced by the respondent no.2 before the learned Tribunal is allowed.

Both the parties may appear before the Rent Tribunal on 15th December, 2005 . The Tribunal shall fix the dates for cross examination of the deponents of each party . It will be the responsibility of each party to keep the witnesses ready for cross examination on such dates fixed by the Tribunal. No order as to costs.

(SANGEET LODHA),J.